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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL RAY BEASLEY,

Defendant and Appellant.

F044684

(Super. Ct. No. F02500112-8)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. James L. Quaschnick, Judge. (Retired judge of the Fresno Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)

William A. Davies, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, and Charles A. French, Deputy Attorney General, for Plaintiff and Respondent.

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\* Before Harris, Acting P.J., Cornell, J. and Dawson, J.

## **INTRODUCTION**

Appellant Michael Ray Beasley pleaded no contest and was sentenced to a stipulated lower term of 16 months in state prison. The procedural history of his case is replete with instances of mistaken identity when appellant's identical twin brother was repeatedly taken into custody on appellant's arrest warrants. We will affirm.

## **FACTS**

At 5:12 a.m. on April 8, 2002, Fresno Police Officer Barker responded to a Jack-In-The-Box restaurant on a burglary dispatch.<sup>1</sup> Officer Barker observed a broken glass door on the building's east side, and discovered the restaurant's office had been ransacked. One of the restaurant's four safes had been opened and \$345 was missing. The assistant manager reported that appellant and two other employees had worked at the restaurant until 10:00 p.m. the previous evening. The restaurant's safes could not be opened without two separate combinations, which were written on a picture frame on the office wall. The picture frame had been removed from the wall. The police reviewed the restaurant's surveillance videotapes, which depicted appellant breaking the glass door and entering the restaurant.

Appellant's coworkers reported that he repeatedly asked about the restaurant's security measures. On the night before the burglary, appellant asked his coworkers to leave open a door because he intended to break into the building later on. Appellant subsequently told an acquaintance that he had broken into the restaurant.

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<sup>1</sup>The facts are taken from the January 2, 2004, probation report given appellant's no contest plea in this case.

### **PROCEDURAL HISTORY**

On April 12, 2002, a complaint was filed in the Superior Court of Fresno County charging appellant with count I, second degree burglary (Pen. Code, § 459).<sup>2</sup> The complaint stated that appellant was also known as “Mark Allen Beasley.” On April 12, 2002, a warrant was issued for appellant’s arrest.

On April 20, 2002, appellant was arrested and he was released on April 21, 2002.

On July 5, 2002, an individual believed to be appellant appeared for the arraignment and pleaded not guilty. The court, however, was advised that this individual might be appellant’s twin brother. The court ordered this individual’s fingerprints to be compared with appellant’s records.

On July 24, 2002, the prosecutor advised the court that the individual in custody was appellant’s twin brother, Mark Beasley, based on the fingerprint comparison. The prosecutor believed appellant was in custody in Tulare County. The court immediately ordered Mark Beasley released and issued an arrest warrant for appellant.

On July 29, 2002, another warrant was issued for appellant’s arrest.

On August 14, 2002, the warrant was served and an individual believed to be appellant was taken into custody.

On August 16, 2002, this individual appeared in court and said he was Mark Beasley.

On September 6, 2002, the court issued a bench warrant for appellant’s arrest.

On September 18, 2002, the court found the individual in custody was Mark Beasley and not appellant, that appellant was in jail in another county, and ordered the bench warrant to remain in effect for appellant.

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<sup>2</sup>All statutory citations are to the Penal Code unless otherwise indicated.

On September 30, 2002, the court issued an order to the Bill Wittman Detention Facility in Tulare County to produce appellant.

On October 3, 2002, another arrest warrant was issued for appellant. On October 23, 2002, the warrant was served and appellant was taken into custody. On October 25, 2002, appellant was arraigned on the complaint and pleaded not guilty.

On November 18, 2002, appellant pleaded no contest to second degree burglary, pursuant to a negotiated disposition to receive the stipulated term of 16 months in prison and dismissal of case No. F02500175-5. Appellant was advised of and waived his constitutional rights and stated no other promises had been made to induce his plea.

On December 18, 2002, appellant failed to appear for the sentencing hearing. Defense counsel stated appellant was in custody in Tulare County and scheduled to be released on January 3, 2003. Counsel requested the court to issue a hold order to Tulare County. The court noted the confusion between appellant and his brother, and that they were both on probation in separate cases. The court issued a bench warrant for appellant's arrest.

On March 14, 2003, the court issued an order to the Men's Correctional Facility in Tulare County to produce appellant.

On April 3, 2003, the court called the case of "People versus Mark Beasley," but no one was present. The bailiff reported he was in custody but "in a diagnostic right now. He's on a jail pass." The prosecutor stated he failed to appear at sentencing and was transported here "on a [section] 1381 that he made for a hearing today."<sup>3</sup> The court asked the bailiff for his whereabouts, and the bailiff wasn't sure. The prosecutor stated "I

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<sup>3</sup>Section 1381 provides that when a convicted defendant is imprisoned in state prison or county jail in California, and there is a pending state criminal action against him, the district attorney must bring him to trial within 90 days after the defendant has given written notice of his place of imprisonment.

received a [section] 1381 from him in the month of March.” The bailiff determined he was not brought to Fresno by the Tulare County authorities, and the court instructed the parties to find out the situation.

On April 10, 2003, the court again called the case of “People versus Mark Beasley.” The prosecutor wasn’t sure whether the individual before the court was appellant or his twin brother. The court ordered this individual’s identity to be determined pursuant to fingerprint records. The individual did not volunteer his identity.

On April 17, 2003, the prosecutor stated the individual before the court was Mark Beasley, based on the fingerprint comparison. The prosecutor stated the case was on calendar as an arraignment “on a [section] 1381 demand.” The prosecutor reviewed the procedural history, that appellant used “Mark Beasley” as an alias, and the various warrants had been issued under both names, which resulted in the repeated arrest of Mark Beasley and appellant’s failure to appear.

“... Because the case listed Michael Beasley with also an AKA of Mark Beasley, the warrant went out, I believe under both of those names. And it precipitated a [section] 1381 demand by the individual who’s here before the Court today who, in fact, has been determined by the Sheriff’s Department by fingerprint comparison to be Mark Beasley, the twin brother of [appellant].”

The court granted the prosecutor’s request to recall the warrant for appellant which listed “Mark Beasley” as his alias, reissue a warrant only in appellant’s name, and correct the various law enforcement records which listed “Mark Beasley” as appellant’s alias. The prosecutor also requested the court to remand Mark Beasley into the custody of the Tulare County Jail “from whence he came.”

“Because he was doing time there. And made a [section] 1381 demand because someone told him, ‘Hey, there’s a warrant for Mark Beasley.’ So he made a [section] 1381 demand, was brought here, and now we’ve sorted this out.”

The court granted the prosecutor’s motion.

On April 30, 2003, yet another warrant was issued for appellant's arrest.

On May 19, 2003, defense counsel advised the court that appellant was in prison.

On October 29, 2003, appellant was finally taken into custody on the warrant. On October 31, 2003, appellant appeared in court for the sentencing hearing. Defense counsel stated appellant had just completed serving "CDC" time in Tulare County. The court continued the sentencing hearing for preparation of the probation report.

On December 3, 2003, the court continued the sentencing hearing.

On December 31, 2003, the court conducted the sentencing hearing. The probation report stated that appellant and his twin brother exchanged names and created confusion among law enforcement agencies in an attempt to evade prosecution. Appellant was criminally sophisticated and oriented, and needed to be held accountable for his behavior. In October 1997, appellant was placed on juvenile probation for felony receiving stolen property. In December 2000, appellant was placed on probation pursuant to Proposition 36 based on his felony conviction for possession of a controlled substance. He never showed up for his appointments with the probation department, never complied with the terms of his Proposition 36 probation, and was still on probation when he committed the instant offense. Appellant was arrested in this case on April 20, 2002 and released on April 21, 2002.

Appellant was arrested in Tulare County on May 7, 2002, and thereafter was continuously in custody. In January 2003, appellant was sentenced to two years in prison based on his convictions in Tulare County for possession of stolen property and three counts of second degree burglary, and committed to CDC in February 2003. He was paroled to the custody of Fresno County in October 2003, and remained in custody because of his pending case.

At the sentencing hearing, appellant argued the negotiated disposition provided for the stipulated 16-month term to run concurrent with the sentences imposed in two Tulare County cases. Appellant claimed he filed a section 1381 demand in July 2002, to be

brought into court and sentenced so the stipulated 16-month term could run concurrent to the Tulare County cases, pursuant to the terms of the negotiated disposition. Appellant argued he should receive concurrent time credits, based on his time served in Tulare County and receive a “paperwork commitment on this case.” The prosecutor reminded the court about the confused identities, disputed appellant’s claims about the terms of the negotiated disposition, and stated there was no evidence appellant ever filed a section 1381 demand. The court continued the hearing to research the matter.

On January 2, 2004, appellant again claimed the negotiated disposition was for the term to run concurrent with the Tulare County cases, and that he filed a section 1381 demand in July 2002.<sup>4</sup> The court rejected appellant’s arguments, denied probation, and sentenced appellant to the stipulated lower term of 16 months pursuant to the negotiated disposition. The court ordered appellant to pay a \$600 restitution fine pursuant to section 1202.4, subdivision (b), and a \$600 restitution fine pursuant to section 1202.45, but stayed the payment of the section 1202.45 fine subject to the successful completion of parole. The court awarded 76 days of actual credits and 38 conduct credits, for a total of 114 days.

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<sup>4</sup>A prisoner must strictly comply with the language of section 1381, and give the district attorney written notice of his location of imprisonment and demand to be brought to trial. (*People v. Clark* (1985) 172 Cal.App.3d 975, 980-981.) The record belies appellant’s claim that he ever filed a section 1381 demand. It was his twin brother—not appellant—who filed a section 1381 demand in March or April 2003. In addition, neither man ever tried to clarify the confusion between their identities and whereabouts, and appellant’s purported section 1381 demand would have been made *before* the November 2002 negotiated disposition. “It is quite apparent that section 1381 requires a defendant to protect his rights to a speedy trial as required pursuant to section 1381 by speaking up when a date set for trial infringes on that right. ‘Neither inadvertence nor gamesmanship dissipates that duty.’ [Citation.]” (*People v. Boggs* (1985) 166 Cal.App.3d 851, 858.)

On January 8, 2004, appellant filed a timely notice of appeal.

### **DISCUSSION**

Appellant's appointed counsel has filed an opening brief which adequately summarizes the facts and adequately cites to the record, which raises no issues, and asks this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) By letter of March 19, 2004, this court invited appellant to submit additional briefing and state any grounds of appeal he may wish this court to consider. Appellant has not done so.

Our independent review discloses no reasonably arguable appellate issues. "[A]n arguable issue on appeal consists of two elements. First, the issue must be one which, in counsel's professional opinion, is meritorious. That is not to say that the contention must necessarily achieve success. Rather, it must have a reasonable potential for success. Second, if successful, the issue must be such that, if resolved favorably to the appellant, the result will either be a reversal or a modification of the judgment." (*People v. Johnson* (1981) 123 Cal.App.3d 106, 109.)

### **DISPOSITION**

The judgment is affirmed.